

J. PETER LARK, Chairman, Michigan Public Service Commission
Testimony Before the House Energy & Technology Committee – MTA Rewrite
Lansing, Michigan – House Office Building – October 12, 2005

THANK YOU CHAIRMAN NOFS AND MEMBERS OF THE COMMITTEE FOR THE CONSIDERABLE AND THOUGHTFUL WORK THAT YOU HAVE OBVIOUSLY EXPENDED IN DEVELOPING HB 5237. MY COLLEAGUES, COMMISSIONERS CHAPPELLE AND MARTINEZ, AND I, APPRECIATE THIS OPPORTUNITY TO COMMENT ON THE BILL.

IT IS OUR VIEW THAT COMPETITION IN ALL TELECOMMUNICATIONS MARKETS MAY ULTIMATELY BE SUFFICIENT TO ALLOW A GREATER DEGREE OF REGULATORY FREEDOM THAN THAT WHICH EXISTS TODAY UNDER THE CURRENT MICHIGAN TELECOMMUNICATIONS ACT. HOWEVER, WE ARE NOT YET TO THE POINT WHERE MICHIGAN CAN RELY SOLELY ON MARKET FORCES TO RESULT IN ROBUST COMPETITION WITHIN THE TELECOMMUNICATIONS INDUSTRY, WHILE AT THE SAME TIME PROTECTING CONSUMERS, ENCOURAGING INVESTMENT, AND PROMOTING JOB GROWTH. WE ARE MOVING EVER CLOSER TO THAT POINT, BUT WE CAUTION THE COMMITTEE ABOUT MOVING TOO QUICKLY INTO A TOTAL DEREGULATORY REGIME.

IN THE SO-CALLED "COMPETITIVE DECLARATION" CASE, THE MICHIGAN PUBLIC SERVICE COMMISSION RECOGNIZED THAT COMPETITION IN TELECOMMUNICATIONS FOR BUSINESS AND RESIDENTIAL CUSTOMERS WAS ADEQUATE IN SBC'S ACCESS AREAS A AND B TO SATISFY THE CONDITIONS SET FORTH IN THE MTA. ACCESS AREAS A AND B ARE ESSENTIALLY THE MAJOR METROPOLITAN AREAS OF MICHIGAN AND CONSTITUTE DETROIT AND SURROUNDING SUBURBS, AS WELL AS FLINT, LANSING, AND GRAND RAPIDS. IN MAKING THIS DETERMINATION, THE COMMISSION RELIED ON SECTION 208 OF THE PRESENT TELECOMMUNICATIONS ACT THAT GIVES THE COMMISSION AUTHORITY TO RECONSIDER ITS FINDINGS WHEN MARKET TRENDS SO

REQUIRE. INDEED, IN ENACTING SECTION 208, THE LEGISLATURE RECOGNIZED THAT THE CONCEPT OF COMPETITION IS INHERENTLY DYNAMIC.

EVEN AT THE TIME OF THE DETERMINATION, THE COMMISSION WAS AWARE THAT THE MARKET WOULD BE CHANGING IN A RELATIVELY SHORT TIMEFRAME. IT IS NO SECRET THAT THE TWO LARGEST COMPETITIVE LOCAL EXCHANGE CARRIERS ARE BEING PURCHASED BY THE TWO LARGEST INCUMBENT LOCAL EXCHANGE CARRIERS. SBC IS BUYING AT&T, AND VERIZON IS BUYING MCI. THESE ACQUISITIONS WILL CHANGE THE COMPETITIVE MARKETPLACE. ADD INTO THE MIX THE RULING BY THE FEDERAL COMMUNICATIONS COMMISSION THAT THE UNBUNDLED NETWORK ELEMENTS – PLATFORM WILL BE PHASED OUT BY MARCH 2006, AND THE COMPETITIVE LANDSCAPE HAS THE POTENTIAL FOR ADDITIONAL CHANGES. THE CONSOLIDATION OF THESE LARGE COMPETITORS MAY LEAVE FEWER ACCESS LINES OPEN TO COMPETITION.

IT SHOULD BE NOTED THAT SBC HAS NOT AS YET REQUESTED A COMPETITIVE DECLARATION FOR ACCESS AREA C, WHICH IS ALL OF THE REMAINING PORTIONS OF ITS SERVICE TERRITORY. IT IS OUR UNDERSTANDING THAT WITH THE EXCEPTION OF A PRIMARY BASIC LOCAL EXCHANGE SERVICE LINE, HB 5237 WILL EFFECTIVELY DEREGULATE ALL OF THE STATE, INCLUDING ACCESS AREA C. THAT IS WHY IT IS CRITICAL THAT A PRIMARY LINE IS AVAILABLE STATE-WIDE, THAT POSSESSES THE TRADITIONAL CHARACTERISTICS OF CURRENT BASIC LOCAL EXCHANGE SERVICE, AND CONTINUES TO BE REGULATED.

WITH RESPECT TO THE APPLICABILITY OF ANTITRUST PROVISIONS, THE COMMISSION HAS TESTIFIED BEFORE PREVIOUS LEGISLATIVE COMMITTEES THAT THE CURRENT ACT CANNOT ACCURATELY BE CHARACTERIZED AS PROVIDING THE TELECOMMUNICATIONS INDUSTRY IN MICHIGAN WITH A

“LEGISLATIVELY MANDATED PERVASIVE REGULATORY SCHEME.” AS YOU KNOW, ABSENT A PERVASIVE REGULATORY SCHEME, MICHIGAN AND FEDERAL ANTITRUST PROVISIONS OBTAIN.

SINCE HB 5237 ERODES COMMISSION AUTHORITY CONTAINED IN THE PRESENT MTA, ARGUMENTS REGARDING THE EXISTENCE OF A “PERVASIVE REGULATORY SCHEME” BECOME FURTHER WEAKENED. INDEED, THE COMMISSION WOULD WELCOME AN EXPLICIT DECLARATION THAT THE REGULATORY PROVISIONS OF THIS ACT DO NOT CONSTITUTE A PERVASIVE REGULATORY SCHEME.

ONE OF THE KEY TENETS OF THE ECONOMIC REGULATION UNDER THE CURRENT MTA IS THE REQUIREMENT THAT RATES SHALL NOT BE LESS THAN THE “TOTAL SERVICE LONG-RUN INCREMENTAL COST,” OF PROVIDING THE SERVICES. HB 5237 APPEARS TO CREATE A DEREGULATED SYSTEM WHERE A PROVIDER CAN PRICE ITS SERVICES BELOW COST. IF THE PROVIDER CAN SUSTAIN PROVIDING SERVICES AT BELOW COST, IT HAS THE POTENTIAL TO DRIVE ITS COMPETITORS OUT OF BUSINESS. THIS PRACTICE, KNOWN AS “PREDATORY PRICING,” HAS A DETRIMENTAL EFFECT ON A COMPETITIVE MARKETPLACE.

PREDATORY PRICING SHOULD BE EXPRESSLY PROHIBITED. WHILE CONSUMERS MAY ENJOY A LOWER RATE IN THE SHORT-TERM FOR SERVICES OFFERED BELOW COST, ONCE COMPETITION HAS BEEN UNDERMINED, THE MONOPOLY PROVIDER CAN RAISE RATES TO UNREASONABLE LEVELS WITHOUT FEAR OF LOSING CUSTOMERS. SECTION 101(2)(A) OF HB 5237 STATES THAT THE FIRST PURPOSE OF THE ACT IS TO: “ENSURE THAT EVERY PERSON HAS ACCESS TO JUST, REASONABLE, AND AFFORDABLE BASIC RESIDENTIAL TELECOMMUNICATION SERVICE.”

THE COMMISSION STRONGLY SUPPORTS THIS PURPOSE. HOWEVER, WE MUST BRING TO THE COMMITTEE'S ATTENTION THE OMISSION OF SPECIFIC LANGUAGE THAT WOULD ASSURE THAT THIS PURPOSE IS ACHIEVED. SPECIFICALLY, WE ARE UNABLE TO FIND ANY PROVISION THAT REQUIRES A PROVIDER TO PROVIDE PRIMARY BASIC LOCAL EXCHANGE SERVICE TO THE CITIZENS OF THIS STATE. IF THE LANGUAGE IN HB 5237 REMAINS UNCHANGED, CURRENT PROVIDERS OF BASIC LOCAL EXCHANGE SERVICE WOULD BE FREE AT ANY TIME TO CEASE OFFERING BASIC RESIDENTIAL SERVICE. HB 5237 DOES NOT EXPLICITLY REQUIRE A REGULATED CARRIER TO OFFER LOCAL EXCHANGE SERVICE. AS A RESULT, MICHIGAN'S MOST VULNERABLE CITIZENS MAY BE AT RISK OF HAVING NO ACCESS TO BASIC TELECOMMUNICATIONS SERVICE. THE LEGISLATURE MUST TAKE EXPLICIT ACTION TO GUARANTEE THAT ALL MICHIGAN CITIZENS WILL HAVE ACCESS TO "JUST, REASONABLE, AND AFFORDABLE BASIC RESIDENTIAL TELECOMMUNICATIONS SERVICE."

TO ACHIEVE THE GOAL STATED ABOVE, THE COMMISSION RECOMMENDS THAT ALL PROVIDERS LICENSED TO PROVIDE BASIC LOCAL EXCHANGE SERVICE AS OF THE DATE OF THIS ACT BE REQUIRED TO PROVIDE AT LEAST PRIMARY BASIC LOCAL EXCHANGE SERVICE AT A JUST AND REASONABLE RATE TO BOTH RESIDENTIAL AND BUSINESS CUSTOMERS.

IN ADDITION, WE ENCOURAGE THE COMMITTEE TO RETAIN LICENSING PROVISIONS FOR TELECOMMUNICATIONS PROVIDERS, INCLUDING PROVIDERS OF BOTH BASIC LOCAL EXCHANGE SERVICE AND PRIMARY BASIC LOCAL EXCHANGE SERVICE.

THE COMMITTEE MAY WISH TO CONSIDER AMENDING THE PROVISIONS TO ENSURE THAT ALL FORMS OF BASIC LOCAL EXCHANGE SERVICE FALL UNDER THE LICENSING PROVISIONS.

THE COMMISSION ALSO URGES THE COMMITTEE TO EXPLICITLY REQUIRE ALL PROVIDERS OF LANDLINE, WIRELESS, VOIP AND BPL-BASED SERVICES – AS WELL AS PROVIDERS OF ANY OTHER TECHNOLOGIES THAT MAY BECOME VIABLE BEFORE THE EXPIRATION OF THIS ACT – TO PROVIDE EMERGENCY SERVICES, INCLUDING E9-1-1 SERVICES, TO THEIR CUSTOMERS FREE OF CHARGE. IF 9-1-1 SERVICE IS NOT AVAILABLE IN AN AREA, THE PROVIDER SHOULD BE REQUIRED TO MAKE ARRANGEMENTS SO CUSTOMERS CAN REACH POLICE, FIRE AND EMERGENCY MEDICAL SERVICES THROUGH ANOTHER MECHANISM. THIS REQUIREMENT IS CRITICAL TO ENSURE PUBLIC SAFETY, BOTH IN THE EVENT OF PERSONAL EMERGENCIES AND IN THE EVENT OF A WIDE-SPREAD THREAT TO PUBLIC SAFETY, SUCH AS A NATURAL DISASTER OR TERRORIST ATTACK.

TO ENABLE ENFORCEMENT OF THIS PROVISION, IT WILL BE IMPORTANT TO REQUIRE ALL PROVIDERS WHO USE EMERGING TECHNOLOGIES SUCH AS VOIP AND BPL, AS WELL AS LANDLINE AND WIRELESS PROVIDERS, TO IDENTIFY THEMSELVES TO THE COMMISSION. THIS CAN BE DONE IN EITHER OF TWO WAYS: EITHER THROUGH THE LICENSURE PROCESS OR, IN CASES WHERE PROVIDERS OF TELECOMMUNICATIONS SERVICES ARE NOT REGULATED BY THE COMMISSION, BY REGISTERING CERTAIN DESCRIPTIVE AND BASIC CONTACT INFORMATION WITH THE COMMISSION.

IN ADDITION TO ENABLING CITIZENS TO HAVE READY ACCESS TO EMERGENCY SERVICES, THE COMMISSION RECOMMENDS THAT CONSUMER PROTECTIONS BE MADE AVAILABLE TO MICHIGAN CONSUMERS, SUCH THAT ALL TELECOMMUNICATIONS PROVIDERS, REGARDLESS OF THE MEDIUM THROUGH WHICH THE SERVICE IS PROVIDED, SHOULD BE PROHIBITED FROM ENGAGING IN SLAMMING AND CRAMMING, AS WELL AS MAKING FALSE AND MISLEADING REPRESENTATIONS. CONSUMER PROTECTIONS ARE A CORNERSTONE OF THE MTA. AS THE MOVE AWAY FROM RATE REGULATION OCCURS, CUSTOMER PROTECTIONS MUST NOT BE LEFT BEHIND – AND I'LL

GO THROUGH A LIST OF JUST A FEW THAT SHOULD BE INCLUDED. TRUTH IN BILLING REQUIREMENTS NEED TO BE INCORPORATED INTO THE BILL – CUSTOMERS SHOULD KNOW HOW MUCH THEY ARE PAYING, AND WHAT THEY ARE PAYING FOR. ADDITIONALLY, LIMITS ON RATE INCREASES AND REVIEW OF OTHER MISCELLANEOUS FEES, SUCH AS THE EUCL NEED TO BE SUBJECT TO PSC REVIEW. FURTHERMORE, THERE IS NO NEED TO HAVE LATE FEE LANGUAGE INCORPORATED INTO STATUTE, AS PROVIDERS HAVE A COMMON PRACTICE OF DOING SO TODAY WITHOUT SUCH LANGUAGE. AT A MINIMUM, SUCH FEE SHOULD BE CAPPED OR BE SUBJECT TO REJECTION BY THE PSC. LASTLY, THE PSC SHOULD HAVE THE POWER TO CONTINUE NUMBER PORTABILITY AND RECLAMATION OVERSIGHT IN A MANNER NOT PRE-EMPTED OR INCONSISTENT WITH FEDERAL REQUIREMENTS. NUMEROUS COMPLAINTS COME IN TODAY WHERE PORTABILITY BETWEEN PROVIDERS, REGULATED AND NON-REGULATED IS PROBLEMATIC FOR CUSTOMERS. THIS CAN BE TROUBLESOME FOR A RESIDENTIAL USER AND CAN BE QUITE COSTLY FOR A BUSINESS USER. THE PSC NEEDS TO BE ABLE TO ASSIST APPROPRIATELY IN THESE SITUATIONS. PROVIDERS SHOULD ALSO BE REQUIRED TO PUBLISH AND PROVIDE FOR ALL CONSUMERS A CLEAR, SIMPLE EXPLANATION OF ALL TERMS, CONDITIONS AND TECHNICAL SPECIFICATIONS OF SERVICES AVAILABLE. PROVIDERS SHOULD ALSO BE REQUIRED TO ASSURE READY ACCESS TO LIVE CUSTOMER SERVICE REPRESENTATIVES. THE COMMISSION STRONGLY URGES THE COMMITTEE TO PROTECT CONSUMERS BY AUTHORIZING THE COMMISSION TO PROMULGATE AND ENFORCE SERVICE QUALITY STANDARDS THAT ARE APPLICABLE TO ALL PROVIDERS OF BASIC LOCAL EXCHANGE SERVICE – NOT JUST PRIMARY BASIC LOCAL EXCHANGE SERVICE. THIS IS IMPORTANT EVEN IN A RESTRUCTURED OR DEREGULATED MARKET. THE PSC SHOULD HAVE THE ABILITY TO PROMULGATE RULES IN REGARD TO QUALITY OF SERVICE NOT ONLY AS THEY APPLY TO THE END USER CUSTOMER, BUT AS THEY APPLY TO WHOLESALE SERVICE. IN ORDER TO ENSURE COMPETITION AND A LEVEL PLAYING FIELD IT IS NECESSARY THAT THE PSC HAVE THE

ENFORCEMENT TOOLS TO PROVIDE PENALTIES IN KEEPING WITH THESE QUALITY STANDARDS.

AS YOU ARE AWARE, MUCH OF THE REGULATORY FIELD IN THE TELECOMMUNICATIONS INDUSTRY IS OCCUPIED BY THE FCC. HOWEVER, THERE ARE NOTEWORTHY ISSUES OVER WHICH THE FCC DELEGATES CERTAIN AUTHORITY TO THE STATES. IT IS IMPORTANT TO THE WELFARE OF THIS STATE THAT THE COMMISSION BE ENABLED TO ACT AS INTENDED WHEN SUCH DELEGATION OCCURS. THEREFORE, THE COMMISSION RESPECTFULLY RECOMMENDS THAT ITS JURISDICTION TO EXERCISE AUTHORITY THAT HAS BEEN GRANTED TO STATES BY THE FEDERAL GOVERNMENT, BE AFFIRMED IN THIS LEGISLATION.

IN CONCLUSION, THE COMMISSION SUPPORTS THE GOALS ARTICULATED IN SECTION 101 OF HB 5237. HOWEVER, WE BELIEVE THAT IN SEVERAL INSTANCES, SUBSEQUENT PROVISIONS FAIL TO FULLY EFFECTUATE THOSE GOALS. THE COMMISSION WILL BE OFFERING FOR YOUR CONSIDERATION AMENDMENTS THAT WE BELIEVE WILL IMPROVE THE BILL IN THE WAYS DISCUSSED ABOVE, AS WELL AS ON LESSER POINTS THAT TIME CONSTRAINTS DO NOT ALLOW ME TO ADDRESS AT THIS TIME.

FINALLY, I WANT TO PARTICULARLY COMMEND CHAIRMAN NOFS FOR HIS PERSONAL EFFORTS IN DRAFTING THE BILL, AND FOR PERMITTING EXTENSIVE INPUT FROM ALL STAKEHOLDERS. AS ALWAYS, WE STAND READY TO PROVIDE TECHNICAL ASSISTANCE TO THE CHAIRMAN AND HIS COMMITTEE, AND SPEAKING ON BEHALF

OF COMMISSIONERS AND STAFF, WE WILL ENDEAVOR TO IMPLEMENT
NOT ONLY THE LETTER, BUT THE SPIRIT OF WHAT YOU ENACT.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.